Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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Embezzlement by Attorney Having Lien.

A peculiar question was raised in behalf of an attorney charged with embezzlement by a contention that, as the funds which he was charged with embezzling were subject to a lien for compensation, he could not be prosecuted for embezzlement of the funds so long as his compensation remained unpaid. The case was one in which an attorney received by check the sum of $20,500, which it was claimed by the prosecuting witness he was to use first for the payment of about $12,000 of the client's debts, and the balance was to belong to the attorney upon his conveyance of certain mining interests. The prosecution was for embezzlement of these funds by converting them to his own use without complying with the conditions on which the funds were received. There was a claim on the part of the defense that the attorney was entitled to the sum of $2,000 for services as attorney, and that he had a lien on these funds therefor, which must be satisfied before he could be charged with embezzling the funds. This raised an unusual question, but the court did not discuss or refer to it, but by implication held that it was not well taken, as the conviction was affirmed. The case is that of State v. Hoshor (Wash.) 67 Pac. 386.

Engineering Law.

An engineering journal comments at some length on what it says is "one of the most important water-rights decisions ever rendered," which it says was handed down by the United States Supreme Court on April 7, holding that "waters of an interstate stream may be diverted for public use in one state regardless of the lower riparian owners in another state." It proceeds to set out elaborately the great importance of this case to the city of New York, and declares that this decision by the Supreme Court of the United States affirms the judgment of an eminent engineer, "M. Am. Soc. C. E.," who "urged in the face of New York legal talent that there must be some means of overcoming the legal obstacles in the way of developing a water supply for New York city so far surpassing all other sources in availability and economy." It says: "Good business sense and New England precedents he believed would be sufficient to carry the day." The case referred to with such satisfaction by this engineering authority is that of City of New York v. Pine, reported in the Advance Sheets U. S. Supreme Court Reports, No. 12, page 592. But, unfortunately for the reputation of engineering authorities for superior ability in the decision of legal questions, the decision is altogether misapprehended. The court expressly says: "We

assume, without deciding, that, as found by the circuit court, the plaintiffs will suffer substantial damage by the proposed diversion of the water;" and at the end of the opinion, which decides the question as to what will be the measure of relief, if the plaintiffs are entitled to any, the court again says: "On that ground alone, and without deciding whether plaintiffs have a legal right to recover damages, the decrees of the circuit court of appeals and the circuit court will be reversed." At least three times the court repeats that it refuses to decide that question, though, as will be seen, for the purposes of the case it assumes, without deciding, that the city of New York did not have the right which the engineering journal so complacently declares has been upheld. The result is that, even if the eminent engineer was right as to the legal rights of the city of New York, the eminent editor of the engineering journal has not successfully demonstrated any superior ability to understand the court's decision.

Unconstitutional Discrimination in Anti-Trust Laws.

The attempt to exempt farmers and raisers of live stock from the provisions of the Illinois anti-trust law has just been held by the Supreme Court of the United States, in Connolly *v.* Union Sewer Pipe Co., to be an unconstitutional discrimination which rendered the entire statute void. This decision affects, not only the statute of Illinois, but similar statutes in other states, and is therefore of far-reaching consequence. The decision may prove to be an unpopular one, but it seems eminently just. Why those engaged in one kind of business should be allowed to enter into a trust or combination to control prices when people engaged in other kinds of business are prohibited from doing so is not apparent.

The dissenting opinion of Mr. Justice McKenna strongly presents a contention that the classification of producers as distinguished from dealers, which the court condemns in the present case, was upheld in the case of American Sugar Refining Co. *v.* Louisiana, 179 U. S. 89, 45 L. ed. 102, where an exemption of the producers of sugar from a license tax imposed on refiners of sugar was held constitutional. The justice very sharply points out the identity of the rule of classification in the two instances. It ought to be admitted that discrimination in tax laws should be based on some reasonable rule of classification. A purely arbitrary choice of the persons who were to bear the burden of taxation would violate all principles of justice. Since classification is the basis of any valid discrimination in a statute, whether it is an exercise of the power to tax or of public police power, it seems at first as if the classification of persons refining sugar into those who did and those who did not produce the sugar would constitute a precedent for the classification in the anti-trust law of persons who raised live stock or agricultural products and those who did not. But there is a distinction between the cases. While classification is the foundation of a just exemption in either statute, the reasonableness of the classification of persons under any statute is to be determined by the purpose of the law. When that purpose is to raise revenue for the government the classification is merely to determine who shall and who shall not be compelled to bear the tax burden. The question of unjust discrimination is merely a question of unfairness as between those taxed and those exempted. No question of illegal conduct or of public policy is involved. The discretion of the legislature with respect to the occupations that may be taxed by a license fee is necessarily very great, and a distinction between producers and dealers is one of the most obvious for that purpose. On the other hand, when the question is as to the legality of combinations in the nature of a monopoly the first thing to consider is the purpose of the law, which is the protection of the public. For that purpose it is immaterial whether those who combine are producers or not, and a combination affecting agricultural products and live stock would affect the public quite as seriously as a combination of almost any kind that can be named. With respect, therefore, to the purpose of the law to protect the public, there seems no reasonable basis for any exception of farmers and live-stock dealers, unless it should be assumed that they would be unable to make any combination that would be effective. But their inability to combine does not seem to be the basis of the exemption. In a state legislature where the farming community has very large representation such an exemption is made quite as a matter of course,

could be charged with embezzling the funds. This raised an unusual question, but the

superior ability in the decision of legal questions, the decision is altogether misapprehended. The court expressly says: "We

because the representatives carry out the wishes of their constituents. But it seems to be very clear in principle that, if combinations to affect prices are contrary to public policy, all classes of people alike should be prohibited from forming them.

Insuring Person's Life without his Consent.

The right of a person having an insurable interest in the life of another to take life insurance thereon without consent of the insured is a matter on which the decisions are not numerous. There are some *dicta* to the effect that a creditor may insure the life of his debtor without the latter's consent as a security for the obligation. Insurance on the life of an infant has been sustained in many cases where the infant's consent was not possible because of a lack of capacity to give it. In a considerable number of other instances attempts have been made to carry insurance on the lives of persons whose consent had not been obtained. Sometimes this was done fraudulently, and in some cases, possibly, under a supposition of a right to do this without the consent of the insured. In addition to these, there are numerous English insurance policies granted on the life of the sovereign, or of some other prominent individual whose consent is not obtained.

The only class of cases in which insurance upon the life of one whose consent is not obtained can be said to have been fairly established in this country consists of the cases of policies on the lives of infants. There are statutes in some states limiting the amount to which insurance can be had, and these, by implication at least, sustain the right to such insurance within those limits. The cases of this kind have not given much consideration to the question of consent, but, inasmuch as consent is impossible where the infant is very young, all cases which uphold such infant insurance necessarily hold that the consent is not necessary. While there are *dicta* in two or three cases to the effect that a creditor can insure his debtor's life without the latter's consent, there are no direct authorities in support of that proposition. In the English case of Von Lindenau v. Desborough, 3 C. & P. 353, insurance on the life of Duke Frederick IV. was taken to secure a debt to a bank at a time when his mind was so much impaired that his consent could not be given. The court did not discuss the question of consent, but decided against the policy on the ground of misrepresentation in obtaining it. There is, in fact, no decision in favor of a creditor's right to such insurance without the debtor's consent. There are cases in which policies taken by a husband or wife or other relative without the consent of the person whose life is insured have been contested, and in some of them the courts have explicitly held that the policy was void unless the insured gave consent.

The general practice of insurance companies in this country to issue no life policies without examination of the insured has prevented the question as to the necessity of consent of the insured from arising very frequently, and makes the question of less practical importance than it would be if the insurance companies were less careful in this particular. But in England the same degree of strictness on the part of the insurance companies is not maintained. The insurance taken on the life of Queen Victoria and of King Edward VII., and likewise that taken, as the newspapers recently reported, by stockbrokers on the life of J. Pierpont Morgan during the course of some large financial operation, must, of course, have been taken without the consent of the insured. The principle of law which should govern in determining the validity of these policies is a matter of much interest.

Public policy seems very clear against the right of one person to insure the life of another without the latter's consent. The main root of evil in all wagering policies, whether on property or on life, is not the element of gambling, but the temptation to crime. The taking of risks is, of course, the very essence of insurance. But the risks contemplated are honest risks, and not those which may be dishonestly caused by the insured. When one has much to gain, and nothing to lose, by the destruction of insured property or life, he may be induced to bring about that event by illegitimate means. The public interests against arson and murder far outweigh those against mere wagers, and the great number of instances in which insurance companies are called upon to pay dishonest losses furnish overabundant proof that a rule of law which should recognize the validity of insurance without insurable interest would seriously conflict with public policy by offering a premium for crime. But,

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if public policy requires an insurable interest in order to sustain a policy, it requires no less strongly that in the case of life insurance the person whose life is insured for the benefit of another must give his consent thereto. The insurable interest of his creditors, as well as of various relatives, is recognized, but to give all such relatives and creditors indiscriminately the right to insure a person's life without his consent would in many cases put him at the mercy of those of whom he is afraid. To let other people put him under such danger without his consent would be inconsistent with the fundamental right to life, liberty, and happiness. A constitutional guaranty of such right might seem somewhat empty to a man living in daily fear for his life because some relative or creditor had too much to gain from his death. The more the courts consider the question the more emphatically they must condemn any insurance of one person's life by another against the will of the insured. If any exception to this rule is made in the case of infants, it must rest on the peculiar closeness of the relation of parent and child. But the scandals that have arisen in years past from this class of cases show the danger of the practice. The only insurance of this kind that seems legitimate is for indemnity against the actual expenses of sickness and burial, so that the amount of the insurance can furnish no inducement to crime.

The English policies above mentioned are peculiar. One class of them consists of policies that are said to be a relic of the feudal system. The liability of the tenant under feudal tenure, in addition to his annual tribute to the lord, to pay a fine on the lord's death for the privilege of continuing the tenure, became modified so as to require the payment of the fine on the death, not of the lord, but of some prominent person, such as the sovereign, whose death would be a matter of public knowledge. As the amount of the fine might be a considerable burden, it became a common practice for the tenant to take insurance on the life of the Queen, or other person on whose death the fine was payable, in order to secure himself against the liability. These leases came to be called "Queen's leases." In such cases it was, of course, impossible to get either the consent, or a medical examination, of the sovereign or other great person whose life was insured, and the insurance companies charged a correspondingly large premium because of the lack of such examination. If the amount of insurance taken in this way was only the amount that the assured would have to pay on the death of the person assured, there could be, of course, no temptation to cause the wrongful death of the insured. A considerable amount of insurance taken in England by theater proprietors and tradesmen has been spoken of in the public press as insurance on the life of the sovereign. Some policies of this kind are said to be outstanding on the life of King Edward VII. to secure tradesmen on their business until after his coronation. The nature of these policies is not clearly stated. They have been sometimes spoken of as policies on the King's life, but they have also been spoken of as policies for the season's profits of the tradesman insured. Of course, if they are merely for indemnity against the actual loss that may occur in case of his death, and are not made for certain sums of money, which might exceed that loss, no inducement to do harm to the King is offered by such policies, except, possibly, with the purpose of giving false proof of losses not actually suffered. The newspapers also report that stockbrokers took large policies on the life of J. Pierpont Morgan while he was in England last year. A copy of these policies published in the "New York Sun" shows that they are straight policies of insurance for a specific amount of money in the event of the death of Mr. Morgan. What explanation of these policies there may be has not been learned. Issued without Mr. Morgan's consent, as they must have been, they seem to be utterly in conflict with public policy. If such policies were written merely by way of indemnity against such losses to the stockbrokers' business as might be actually proved to result from Mr. Morgan's death, they would, of course, furnish no illicit temptation to do him injury. But, if any stockbroker who chose could insure Mr. Morgan's life for as large an amount of money as he might wish, and without Mr. Morgan's consent, the situation would be intolerable. It does not seem possible that the English courts would sustain policies of this kind, and, so far as a careful search reveals, they have never done so. In fact, the English courts have not been called upon to sustain any policies of this kind. When such policies come before the court for careful consideration it seems certain that they will be condemned.

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Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 55, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Animals.

The owner of a dog which has always been of a kind temper and has never given occasion to suspect that he would bite is held, in Martinez *v.* Bernhard (La.) 55 L. R. A. 671, not to be rendered liable in damages

or other great person whose life was insured, and the insurance companies charged a cor-

fore the court for careful consideration it seems certain that they will be condemned.

by the mere fact that the dog bites someone, where the owner is guilty of no negligence.

Benefit Societies.

An agreement by the holder of a mutual benefit certificate to be governed by by-laws subsequently enacted is held in Gaut *v.* Supreme Council A. L. of H. (Tenn.) 55 L. R. A. 465, not to authorize the reduction of the benefit called for by his certificate, after he has for years paid assessments on its original value.

A member of a mutual benefit society is held, in Rogers *v.* Union Benevolent Soc. No. 2 (Ky.) 55 L. R. A. 605, not to be properly adjudged in default for nonpayment of dues, where the amount of accrued sick benefits to which he is entitled exceeds the unpaid dues.

Bonds.

See also ESTOPPEL.

The penalty named in a bond of a contractor for public work, given in compliance with a statute requiring it to be conditioned for the performance of the contract, with the additional obligation that the contractor shall pay for labor and materials, is held, in Griffith *v.* Rundel (Wash.) 55 L. R. A. 381, not to be the measure of the liability of a surety thereon who has taken charge of and completed the work at a loss exceeding the penalty of the bond; but it is held that he may still be liable to laborers and materialmen for the amount of their claims.

Carriers.

See also CONSTITUTIONAL LAW; EVIDENCE.

The right to designate the route of through shipments at through rates is held, in Post *v.* Southern R. Co. (Tenn.) 55 L. R. A. 481, to belong to the carrier, and not to the shipper, in the absence of a sufficient or controlling reason to the contrary.

The expulsion from a train of a passenger holding a round-trip ticket which is not signed and stamped by an agent of the company as required by a condition on the ticket to make it good for return passage is held, in Southern R. Co. *v.* Wood (Ga.) 55 L. R. A. 536, to render the company liable in damages, where the passenger had used due diligence to find an agent authorized to sign and stamp his ticket, but was unable to do so because of the failure of the company to have such agent present at the station.

The death of a steamship passenger, caused by sleeping on a wet mattress, is held, in Van Anda *v.* Northern Navigation Co. (C. C. App. 7th C.) 55 L. R. A. 544, not to render the company liable where, because of an extraordinary passenger list, he could not be furnished with a berth, and agreed to make use of a mattress borrowed by the company from a store keeper, the condition of which he had opportunity to inspect.

One who purchases a railroad ticket for the sole purpose of checking his baggage upon it, with the intention of going to his destination in his private conveyance, is held, in Marshall *v.* Pontiac, O. & N. R. Co. (Mich.) 55 L. R. A. 650, to have no right to recover in case it is stolen from the baggage room, unless the carrier is guilty of gross negligence.

Cemeteries.

A cemetery company which purchases land and dedicates it as a public burying ground is held, in Oakland Cemetery Co. *v.* People's Cemetery Association (Tex.) 55 L. R. A. 503, to have no power to create debts on the faith of the land so dedicated; and a sale of a portion of such land for a debt of the company is held to be void as in violation of the rights of the lotowners.

Constitutional Law.

A statute defining contempts, and providing a punishment therefor, and also providing that in all cases of indirect contempt the party so charged shall upon demand have a change of judge or venue and a jury trial, is held, in Smith *v.* Speed (Okla.) 55 L. R. A. 402, to be invalid as an interference by the legislature with the inherent right of courts to punish for contempt.

A statute making carriers liable for injuries to passengers except where the injury is caused by the criminal negligence of the person injured, or by the violation of an express rule or regulation of the company actually brought to the notice of the injured

See SALE.

Poor.

Liability of alleged pauper, or his estate, to pay for support or gifts obtained

sion to suspect that he would bite is held, in Martinez v. Bernhard (La.) 55 L. R. A. 671, not to be rendered liable in damages

passenger, is held, in Chicago, R. I. & P. R. Co. v. Zernecke (Neb.) 55 L. R. A. 610, to be within the police power of the state.

Contracts.

A contract for public supplies, let upon a bid tendered pursuant to an advertisement limiting the right to bid to persons employing, or who will in the future employ, union labor only, is held, in State *ex rel.* Robert Mitchell Furniture Co. v. Toole (Mont.) 55 L. R. A. 644, to be invalid.

Corporations.

Directors of an insolvent corporation are held, in American Exch. Nat. Bank v. Ward (C. C. App. 8th C.) 55 L. R. A. 356, not to be precluded from executing a chattel mortgage upon the corporate assets to secure their own just demands, if they act in absolute good faith.

Counties.

A county is held, in Pearce v. Gibson County (Tenn.) 55 L. R. A. 477, to have no right, in the exercise of its governmental power, to discharge the waterclosets of its court house on to the land of an adjoining owner to his injury.

Courts.

See CONSTITUTIONAL LAW.

Criminal Law.

The existence of an uncontrollable, insane impulse to commit a crime known to be such is held, in State v. Knight (Me.) 55 L. R. A. 373, not to modify the criminal responsibility for the act.

That the impulse to steal is inspired by avarice or greed is held, in State v. McCullough (Ia.) 55 L. R. A. 378, not to preclude the defense of insanity, if the will power is weakened to such an extent as to leave the afflicted one powerless to control the impulse.

Death.

See PLEADING.

Electrical Uses.

An employee of a telephone company, who attempts to string wires over those of an electric-light company, is held, in Mitchell v. Raleigh Electric Co. (N. C.) 55 L. R. A. 398, to have a right to presume that the latter company has complied with an ordinance requiring its wires to be insulated, and to be bound to look for patent defects only.

Estoppel.

A municipal corporation is held, in Independent School Dist. v. Rew (C. C. App. 8th C.) 55 L. R. A. 364, to be estopped, in an action on its bonds by an innocent purchaser thereof, to deny the truth of recitals therein.

Evidence.

The mere fact of injury to a street-car passenger by a collision of the car with a vehicle is held, in Harrison v. Sutter Street R. Co. (Cal.) 55 L. R. A. 608, to create no presumption of negligence against both the carrier and the owner of the vehicle.

The general manager of a mining company is held, in Spelman v. Gold Coin Min. & Mill. Co. (Mont.) 55 L. R. A. 640, not to be presumed to have implied authority to make the company liable for medical or surgical aid for its employees injured in the course of their employment without fault of the company.

Garnishment.

Plaintiff in an action to recover money is held, in First Nat. Bank v. Elliott (Kan.) 55 L. R. A. 353, to have no right to summon or charge himself as garnishee therein, under statutes providing that in case the garnishee fails to answer the court may render judgment against him and giving plaintiff the right to an execution in case the garnishee fails to pay.

Highways.

Using a part of a railroad location outside of the space occupied by the tracks, for the abutments and approach of a bridge constructed to carry an existing highway over the road, so as to abolish a grade crossing, is held, in Boston & A. R. Co. *v.* Worcester (Mass.) 55 L. R. A. 623, not to be the imposition of a new easement on the railroad right of way so as to entitle the railroad company to compensation therefor.

Injunction.

One who is only indirectly and remotely affected by a by-law of a voluntary association prohibiting its members from dealing on the market either with nonmembers engaged in the same business or with others who deal with such nonmembers, and making a violation thereof punishable by fine or expulsion from the association, is held, in Downs *v.* Bennett (Kan.) 55 L. R. A. 560, to have no right to maintain an action of injunction to restrain the association from fining or expelling a member for his violation of such by-law.

Insurance.

An insurance company is held, in Franklin F. Ins. Co. *v.* Bradford (Pa.) 55 L. R. A. 408, to be liable on a policy properly signed and delivered by a subagent of its duly authorized agent, although it has expressly forbidden the agent to insure the property covered by the policy, and the agent has no knowledge that the policy has been written and the premium collected.

That one is a general agent of an insurance company for a defined territory is held, in Insurance Co. of N. A. *v.* Thornton (Ala.) 55 L. R. A. 547, to give him no power to bind the company by contracts entered into outside of his territorial limits.

Judgment.

A defendant is held, in Travelers' Protective Asso. *v.* Gilbert (C. C. App. 8th C.) 55 L. R. A. 538, to have no right to avoid a judgment against it on the ground that its agent on whom the process was served misapprehended the nature of the act, believing he was not the proper person to receive service, and therefore failed to notify defendant, which was thereby deprived of the opportunity of making a defense.

Laches.

Claimants of conflicting mining claims, who, after entering into a verbal agreement by the terms of which all former locations are abandoned, and new locations made in the name of one of the parties on condition that each shall perform his own *pro rata* share of the work necessary to maintain such locations, and procure patents for the same, leave the territory and fail for more than eight years to enforce their alleged rights, are held, in Patterson *v.* Hewitt (N. M.) 55 L. R. A. 658, to be guilty of laches; and a court of equity will not aid them to obtain an accounting and to recover any interests in the mining claims, where during their absence the other claimants performed their share of the work required, and other parties contributed large sums of money toward the development of the claims, which were only of speculative value when the plaintiffs left the territory, the result of which was a great enhancement in the value of the property, toward which claimants contributed nothing.

Landlord and Tenant.

See SUBROGATION.

License.

A license fee on employment agencies for the purpose of raising revenue is held, in Price *v.* People (Ill.) 55 L. R. A. 588, to be valid in the absence of a constitutional prohibition thereof.

Limitation of Actions.

A cause of action for injury from the subsidence of the surface over a mine is held, in Noonan *v.* Pardee (Pa.) 55 L. R. A. 410, to arise at the time of the removal of the sup-

port, so as to start the running of the statute of limitations, and not at the time of the resulting subsidence.

The relation of principal and surety between mortgagors and a purchaser of the mortgaged property who assumed and agreed to pay the mortgage, being recognized and accepted by the mortgagee, and the cause of action against the purchaser being barred by the statute of limitations, it is held, in Mulvane v. Sedgley (Kan.) 55 L. R. A. 552, that an action against the mortgagors or surety is also barred.

Master and Servant.

See EVIDENCE.

Mines.

See LIMITATION OF ACTIONS.

Mortgage.

See LIMITATION OF ACTIONS.

Municipal Corporations.

See also CONTRACTS; ESTOPPEL.

A municipal corporation is held, in Levin v. Burlington (N. C.) 55 L. R. A. 396, not to be liable for damage resulting from the acts of its officers, under statutory authority, in arresting one who has passed the night in a house containing a smallpox patient, and compelling him to remain in the house during a period of quarantine, although he was not directly exposed to the disease and did not take it.

A municipal ordinance making it a misdemeanor for one not an employee of a railroad company to be found jumping on or off from a moving train, if applied to the case of a passenger attempting to board a train which has begun to move, is held, in Mills v. Missouri, K. & T. R. Co. (Tex.) 55 L. R. A. 497, to be void as beyond the power of a municipality.

That the keeping of a house of ill fame is made a misdemeanor by state law, so that one accused of so doing is entitled to a jury trial, is held, in Ogden v. Madison (Wis.) 55 L. R. A. 506, not to prevent a municipal corporation from imposing a penalty for such conduct as a mere measure of suppression, which may be enforced without a jury trial.

The number of votes necessary to pass an ordinance over a veto, under a statute providing that it shall be two thirds of all the members elected to the council, is held, in Pollasky v. Schmid (Mich.) 55 L. R. A. 614, to be required to be based on the total number elected, although at the time of the vote one member has died and one resigned.

An ordinance prohibiting the making of a public address in any of the public places of the city within a half mile of the city hall, without a license from the mayor, is held, in Love v. Phalen (Mich.) 55 L. R. A. 618, to be reasonable.

Negligence.

A boy twelve years old who is injured by collision with a slowly moving team in a public street is held, in Gleason v. Smith (Mass.) 55 L. R. A. 622, to have no right to recover, where, without care or precaution to avoid collision with vehicles, he is using the street as a playground, and comes in contact with the team in attempting to catch another boy, although the driver is negligent in having his attention diverted from his horses to a vehicle behind him.

Officers.

The governor's implied authority is held, in Cahill v. State Auditors (Mich.) 55 L. R. A. 493, not to extend to the employment of council at the expense of the state to assist in drafting proposed amendments to the state Constitution.

Pleading.

An action for wrongful death having been properly brought by the personal representative of the deceased, by the filing of a valid summons, but the declaration being a nullity because the statutory beneficiaries are not named, it is held, in Love v. Southern R. Co. (Tenn.) 55 L. R. A. 471, that a new declaration may be filed for the purpose of naming them, even after the limitation period has elapsed.

Poor.

Persons who were induced to support a woman during several years by her fraudulent pretense that she was destitute, when in fact she had a considerable estate in bank, are held, in Anderson *v.* Eggers (N. J. Eq.) 55 L. R. A. 570, to be entitled to be recompensed out of the estate for the money and property so furnished to her.

Public Improvements.

A contract for a street pavement, which provides that the contractor shall do all work necessary to keep the pavement in good condition for a period of seven years, and that a portion of the contract price shall be withheld until the expiration of that period, is held, in Shank *v.* Smith (Ind.) 55 L. R. A. 564, to impose no burden for repairs upon abutting owners, but to be merely a lawful guaranty of the work.

Railroads.

See also CARRIERS.

The fact that a railroad company has permitted the use of a path along its tracks by persons going to and from its trains is held, in Pennsylvania R. Co. *v.* Martin (C. C. App. 3d C.) 55 L. R. A. 361, not to impose upon it the duty of exercising care to protect from injury by passing trains a person using it to reach the station to interview about his own affairs a passenger expected to be on a train not scheduled to arrive at the station within an hour.

Injury by a train to a person negligently walking on a railroad trestle without ability to save himself from the injury is held, in Bogan *v.* Carolina C. R. Co. (N. C.) 55 L. R. A. 418, to render the company liable if those in charge of the train discover, or by the exercise of ordinary care might discover, the peril of the injured person, and might by the exercise of such care avoid the accident.

The mere fact that those in charge of an engine about to cross a footpath see a responsible traveler approaching the crossing at a speed which renders collision imminent, but fail to take steps to avoid it, is held, in Gahagan *v.* Boston & M. R. Co. (N. H.) 55 L. R. A. 426, not to entitle the latter, who, without any attention to the possibility of an approaching train, steps onto the track immediately in front of the engine, to hold the company liable for an injury, since the railroad employees are not bound to anticipate the traveler's negligence.

One who is injured in attempting to cross a railroad track by the negligent operation of a push car in the hands of one to whom it has been loaned by the foreman of a gang of men in the employ of the railroad company is held, in Erie R. Co. *v.* Salisbury (N. J. L.) 55 L. R. A. 578, to be entitled to recover from the company.

A railroad company having power to condemn land for a right of way for a switch track is held, in Louisville & N. R. Co. *v.* Pittsburgh & K. Coal Co. (Ky.) 55 L. R. A. 601, to have no power to bind itself by an agreement with a dealer in coal that, in consideration of the right to place the track on his land, it will not be used to haul coal for other persons having access to it.

Real Property.

A deed to the grantor's daughter and her husband and "their bodily heirs" is held, in Atherton *v.* Roche (Ill.) 55 L. R. A. 591, under the Illinois statute, to vest a life estate in the first takers, with a remainder in fee to the heirs of the bodies of both.

Removal of Causes.

A nonresident railroad company sued jointly with its resident agent for injuries caused by the latter's negligence is held, in Winston *v.* Illinois C. R. Co. (Ky.) 55 L. R. A. 603, to have no right to remove the suit to a Federal court, although the agent was joined to prevent such removal.

Sale.

A stipulation in a contract for the sale of a proprietary medicine, that the purchaser shall not sell it for less than a specified price, is held, in Garst *v.* Hall & L. Co. (Mass.) 55 L. R. A. 631, not to follow the medicine into the hands of a subsequent vendee.

Street Railways.

See EVIDENCE.

Subrogation.

A landlord responsible for the defective condition of an automatic fire-extinguishing apparatus on the leased premises is held, in United States Casualty Co. *v.* Bagley (Mich.) 55 L. R. A. 616, not to be able to avoid liability to one who insured the tenant against loss on account of the apparatus, and who has been subrogated to his claim against the landlord for a loss, on the ground that he was negligent in taking the risk.

Taxes.

A single taxpayer, though a nonresident, is held, in Com. use of Wiggins *v.* Scott (Ky.) 55 L. R. A. 597, to have the right to bring a suit on behalf of himself and all others similarly interested to recover back money illegally exacted for taxes.

The insertion in a statute, the obvious intent of which is to tax every interest, present or future, passing by will to persons not exempt, of provisions that the tax shall be due and payable within two years after the executor's qualification, and that suit shall be brought in six months after it is due, is held, in Howe *v.* Howe (Mass.) 55 L. R. A. 626, not to prevent the taxation of future contingent interests which do not vest within such time, where the statute also provides that the probate court may extend the time when the tax is payable, whenever the circumstances of the case may require.

Timber.

An instrument in the form of a deed purporting to convey to named grantees, their heirs, and assigns, at a specified price per acre, "all the pine timber suitable for sawmill purposes" on described lots of land, and providing that the balance due on each lot shall be paid when the lot is entered to cut the timber, is held, in McRae *v.* Stillwell (Ga.) 55 L. R. A. 513, to make it incumbent upon the grantees or their successors in title to cut and remove such timber from the lots within a reasonable time from the date of the conveyance; and it is held that on failure to do so their interest in the timber ceases.

Waters.

The owner of land on which surface water has collected in a pond is held, in Brandenberg v. Zeigler (S. C.) 55 L. R. A. 414, to have no right, by cutting through the natural rim of the basin, to drain the water upon a neighbor's property to his injury.

Wills.

Under a statute providing that all wills shall be in writing and shall be signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him and the writing declared to be his last will, in the presence of two witnesses present at the same time, who shall subscribe their names thereto as witnesses in the presence of the testator, it is held, in Lacey *v.* Dobbs (N. J.) 55 L. R. A. 580, that it is essential to validity that everything required to be done by the testator shall precede in point of time the subscription of the witnesses.

New Books.

"Criminal Instructions." By Everett W. Pattison. (Gilbert Bock Co., St. Louis, Mo.) 1 Vol. $5.

"Codes of Idaho." Consisting of Political Code, Civil Code, Code of Civil Procedure, Penal Code. (Bancroft-Whitney Co., San Francisco, Cal.) 4 Vols. $16.50.

"Rust's Criminal & Penal Code." Brought Down to Date, with New Index and Forms. (Matthew Bender, Albany, N. Y.) 1 Vol. $3.50.

"American Electrical Cases." Vol. 7. (Matthew Bender.) $6.

"Virginia Decisions." 277 Virginia Cases Which Have Never Been Officially Reported, with Index and Table of Cases. (The Michie Company, Charlottesville, Va.) 2 Vols. $10.

"Silvernail's Code 1902." (W. C. Little & Co., Albany, N. Y.) 1 Vol. $5.

"The Law and Practice in Proceedings Supplementary to Execution." Including

Those in Receivership and Contempt, with All Statutes and Decisions, Construing the Same, to January 1, 1902. By George W. Bradner. (W. C. Little & Co.) 2d Ed. 1 Vol. $4.

"Ballard's Annual of Real Property." (T. H. Flood & Co., Chicago, Ill.) 7 Vols. and Index. Price per Vol. $5. Special Price Made in Sets.

"Indiana Practice, Pleading and Forms." Adapted to New Revised Code of Indiana. By John D. Works. (The Robert Clarke Co., Cincinnati, Ohio.) 3d Ed. 3 Vols. $18.

"Bailments, Pawn, Pledge, Innkeepers, and Carriers." By Philip T. Van Zile. (Callaghan & Co., Chicago, Ill.) 1 Vol. $5.

"Pierce's Washington Code." (Tribune Printing Co., Seattle, Wash.) Price of Code $6.50. With Separate Annotations, $8. Special Introductory Price for Both, $5.

"Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States." Submitted to Hon. Elihu Root, Secretary of War, by Charles E. Magoon, Law Officer, Division of Insular Affairs, Office of the Secretary, War Department. Published by Order of the Secretary of War, Washington. Government Printing Office. 1 Vol. 1902.

This is a very exhaustive report on the subject of the law of civil government in territory subject to military occupation. To those who are interested in this question, either in its legal or its political aspect, this volume will be of great interest and value.

"The Modern Corporation." By Thomas Conyngton. The Ronald Press, New York, 1902. 1 Vol. $3.50.

This little book makes a concise statement of the business methods and advantages of the business corporation. It does not give citations of authorities, but is an elementary treatise. Those not familiar with the subject will find it a condensed and clear statement of the advantages and disadvantages of corporations.

"The Barrister." Being Anecdotes of the Late Tom Nolan, of the New York Bar. Compiled by Charles Frederick Stansbury. The Mab Press, Great Kills or 116 Nassau St., New York. 1 Vol.

This is filled with amusing anecdotes of one who was long a picturesque figure of the New York bar.

"Important English Statutes Such as Are Re-enacted, in Form or in Substance, in Most of the States of the United States." Edited by John R. Rood. Published by George Wahr, Ann Arbor, Mich. Pamphlet.

The contents are: The Statute of Frauds; The Statute of Wills; Victoria; Lord Campbell's Act; The Mandamus Statute of Anne, and Lord Tenterden's Act.

Recent Articles in Law Journals and Reviews.

"Foreign Curators of Lunatics and the English Courts."—36 Law Journal, 480.

"Bondholders as Complainants in the Foreclosure of Corporate Mortgages."—54 Central Law Journal, 364.

"Compulsory Vaccination and Detention in a Pest House as an Infringement of Personal Liberty."—54 Central Law Journal, 361.

"Negligence of Fellow Servants."—17 Chicago Law Journal, 345.

"The Civil Code of Japan, Compared with the French Civil Code."—11 Yale Law Journal, 354.

"The Law of Marriage and Divorce."—11 Yale Law Journal, 340.

"Proposed Amendments to the Federal Bankruptcy Law."—2 Columbia Law Review, 313.

"General Average Liability with Cargo for Successive Ports.—2 Columbia Law Review, 275.

"Spendthrift Trusts."—54 Central Law Journal, 382.

"Right of Minority Stockholders to Interfere with Transactions of the Corporation Prior or Subsequent to Their Becoming Stockholders."—54 Central Law Journal, 381.

"The Authority of Counsel to Compromise."—113 Law Times, 27.

"The Independence of the Judiciary."—64 Albany Law Journal, 172.

"National Regulation of Trusts."—64 Albany Law Journal, 170.

"Insular Courts."—64 Albany Law Journal, 164.

"Justice in the Philippines."—64 Albany Law Journal, 154.

"How the Bankruptcy Law Works."—64 Albany Law Journal, 153.

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